

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 160

May 10, 1995, 11:40 a.m.
Page S-6393 Temp. Record

PRODUCT LIABILITY/Punitive Damage Cap Elimination

SUBJECT: Product Liability Fairness Act . . . H.R. 956. Gorton motion to table the Dorgan amendment No. 629 to the Coverdell/Dole substitute amendment No. 690, as amended, to the Gorton substitute amendment, as amended.

ACTION: MOTION TO TABLE AGREED TO, 54-44

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment, as amended, would amend product liability law in Federal and State actions by abolishing the doctrine of joint liability for noneconomic damages, creating a consistent standard for the award of punitive damages and limiting such damages, and requiring the disclosure of attorney fees (see vote No. 135). It would also reform medical malpractice liability laws (see vote Nos. 137-144), provide sanctions for frivolous suits (see vote No. 136), and cap punitive damage awards in civil cases affecting commerce (see vote No. 146).

The Coverdell/Dole substitute, as amended (see vote No. 156), would restore the language of the Gorton substitute as it was introduced with the following exceptions:

- punitive damage awards in product liability cases could not exceed the greater of 2 times the sum of economic and noneconomic losses or \$250,000 (see vote Nos. 139, 145, and 146 for related debate); however, a court could exceed this limit if it deemed appropriate, in which case the defendant could demand a new trial on punitive damages;
- a punitive damage award in a product liability action could not exceed the lesser of \$250,000 or 2 times the sum of economic and noneconomic losses if assessed against: a business, organization, or government with fewer than 25 employees; or an individual with a net worth of less than \$500,000; and
- either a plaintiff or a defendant in a product liability action could suggest within 60 days of an initial complaint that alternative dispute resolution procedures in a State be used to resolve the complaint, and the opposing party would have to accept or reject the offer within 10 days.

(See other side)

YEAS (54)			NAYS (44)			NOT VOTING (2)	
Republicans (46 or 87%)		Democrats (8 or 18%)	Republicans (7 or 13%)		Democrats (37 or 82%)	Republicans (1)	Democrats (1)
Abraham	Hatfield	Dodd	Cohen	Akaka	Heflin	Warner- ²	Lieberman- ^{4AY}
Ashcroft	Helms	Exon	D'Amato	Baucus	Hollings		
Bennett	Hutchison	Glenn	Packwood	Biden	Inouye		
Bond	Inhofe	Johnston	Roth	Bingaman	Kennedy		
Brown	Jeffords	Nunn	Shelby	Boxer	Kerrey		
Burns	Kassebaum	Pell	Simpson	Bradley	Kerry		
Campbell	Kempthorne	Robb	Specter	Breaux	Kohl		
Chafee	Kyl	Rockefeller		Bryan	Lautenberg		
Coats	Lott			Bumpers	Leahy		
Cochran	Lugar			Byrd	Levin		
Coverdell	Mack			Conrad	Mikulski		
Craig	McCain			Daschle	Moseley-Braun		
DeWine	McConnell			Dorgan	Moynihan		
Dole	Murkowski			Feingold	Murray		
Domenici	Nickles			Feinstein	Pryor		
Faircloth	Pressler			Ford	Reid		
Frist	Santorum			Graham	Sarbanes		
Gorton	Smith			Harkin	Simon		
Gramm	Snowe				Wellstone		
Grams	Stevens						
Grassley	Thomas						
Gregg	Thompson						
Hatch	Thurmond						

EXPLANATION OF ABSENCE:

- 1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

- AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

The Dorgan amendment to the Coverdell/Dole amendment would provide that "Notwithstanding any other provision of this Act, nothing in this Act shall impose limitations on punitive damage awards."

Debate was limited by unanimous consent. Following debate, Senator Gorton moved to table the Dorgan amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: The Coverdell/Dole amendment, as amended, was not open to further amendments, but the Senate agreed by unanimous consent to consider the Dorgan amendment.

Those favoring the motion to table contended:

Argument 1:

The Dorgan amendment has been offered to remove the punitive damage award caps from this bill. Unfortunately, those of us who favor such caps have already lost on this issue--no caps exist except for small businesses and individuals of moderate means. If a judge makes certain findings of egregious conduct he or she can impose unlimited punitive damages. The Supreme Court, in several recent cases, has spoken of the serious constitutional questions that are raised by unlimited punitive damages, and has invited Congress to take legislative action to tie the size of such damages to the compensatory losses suffered. We tried to do that in this bill, but we were forced to retreat in order to gain enough votes to invoke cloture. Still, the provisions in this bill on limiting punitive awards will have some positive effects. They will serve as guidance for tying punitive damages to compensatory losses, they will set the standard that small businesses and individuals will not be subject to as large punitive damage awards as large businesses and wealthy individuals, and they will make it more difficult to impose unlimited awards by adding extra procedural steps. The Dorgan amendment would get rid of even these modest reforms. We are already disappointed that we had to compromise as much as we did in order to get enough votes to invoke cloture. We are certainly not going to make further concessions now by agreeing to the Dorgan amendment.

Argument 2:

We oppose punitive damage award caps, and we are pleased that those caps were removed during negotiations. Those negotiations were conducted in good faith, and do not now need to be supplemented by the redundant provisions of the Dorgan amendment. This amendment should therefore be tabled.

Those opposing the motion to table contended:

This amendment is nearly identical to the Dorgan amendment which was offered to the Dole amendment prior to cloture (see vote No. 145). That amendment was narrowly rejected. In light of recent events, including that the bill has been amended to be more narrowly focused on product liability and that cloture has been invoked, we think that it is appropriate to see if this amendment now has greater support. Hopefully enough Senators will switch their votes that the amendment will carry this time. Though the circumstances may have changed, the arguments have not. The bill before us will forbid the award of punitive damages unless there is clear and convincing evidence that a defendant acted with "conscious and flagrant indifference to the safety of others." If that high standard is met, we see no excuse to limit arbitrarily the amount of punishment that may be inflicted. We do not object to the high standard; we only object to the arbitrary limits. We therefore oppose the motion to table, and urge our colleagues to do likewise.